1950.

File No. S. Bijapur 10/50

Legal **DEPARTMENT**
A **BRANCH**

Subject:— Bijapur Suit

Civil Suit No. 204 of 1945

M. H. Bepari and 7 others — Plff.

vs.

The State of Bombay — Defts.

For restoration of cattle which were attached by the Police and members of the Home Guard.

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S. Bijapur 10/50

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Bijapur Civil Suit No. 204 of 1949.

The Suit is filed by certain dealers in cattle against Government. The plaint is crudely drafted but apparently the plaintiff's grievance is against the attachment of their cattle by the Police and members of the Home Guard, while the cattle were being driven from Bijapur to Sholapur. On or about the 16th February 1949. It is not disputed that the plaintiff's animals were attached by the Police and it is said that this was done under the Bombay Essential Commodities and Cattle Control Act. The plaintiff say that they are bonafide dealers in cattle and were taking the animals from Bijapur to Sholapur for the purpose of trade and not for slaughtering.

From the papers submitted by the Collector it appears that the Police had taken similar action about the cattle belonging to another group of dealers and when there dealers applied to the District Magistrate for restoration of their cattle on 11th January 1949, their applications were forwarded to the District Superintendent of Police for enquiry and report. In that enquiry it was found that the applicants were bonafide dealers in cattle and that they had not committed breach of any order issued by Government under the Essential Commodities and Cattle Control Act and therefore no action was necessary. The Police had therefore applied to the Magistrate First Class , Indi, for restoration of the cattle to the applicants and the latters were informed accordingly by the District Magistrate on 17th March 1949.

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Now the plaintiffs in this suit had also made a similar application on 22nd February 1949 for restoration of their cattle on the ground that they were bonafide dealers in cattle and that they had

not committed any offence . The District Magistrate replied to the plaintiff on 17th March 1949 that the District Superintendent of Police had been asked to inquire in the matter and restore the cattle to them if deemed proper. A copy of that reply was endorsed to the District Superintendent of Police for necessary inquiry in the matter and for restoring the cattle to the plaintiff if deemed proper. But there are no papers to show what was the result of that inquiry . It is not known whether the case of the plaintiffs is in any way different from that of the other dealers to whom the animals were ordered to be restored.

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The attention of the District Magistrate may therefore be invited to his letter No. M.G.M.969 dated 17th March 1949 to the plaintiffs. He may be requested to state the result of the Police inquiry in the Court and to state whether the plaintiffs are found to have committed breach of any order issued by Government under the Essential Commodities and Cattle Control Act 1946 and if not, to state whether there is any objection to restore the animals to them if they are bonafide dealers in cattle.

29/12 1949

29/12

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Legal Department.

For facts of this case please see my previous note of 29-12-1949 and the letter to the Dist. Magistrate dated 3-1-1950 at pp. 15-17 ante. The D.M's reply received after three months is at p 19. The reply is not very explicit, but it seems clear that the cattle were not attached for breach of any order under the Essential Commodities and Cattle Control Act of 1946. Nor, as the D, G.P. says, have the Police the power to seize cattle under that Act except under an order made by Govt. under clause (j) of section 4(1) or under a direction from the Magistrate under section 10(2). In these circumstances all that can be urged in the suit is (1) that plaintiffs are being prosecuted for an offence under section 61 E of the District Police Act 1890 and therefore the cattle could not be returned to them (2) that after the animals were sent to the Goshala the plaintiffs were allowed to take them back on executing a security bond but they refused to do so (3) that Government is not therefore liable to restore the cattle to them and cannot do so in any case because only 12 out of the 46 animals attached are now alive. If A.L.R. agrees a brief will be put up.

Incidentally the last but one sentence of the D.M's letter may be seen . It seems Government is threatened with another more serious litigation as an offshoot of this case.

A. L. R

A maybe done

RK 6/4

No 5081
dt. 14-4-1950.

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In the Court of the Civil Judge, Senior Division,

At. Bijapur.

Civil Suit No. 204 of 1949.

1. Mahamadsaheb Husensaheb Ansarsaheb Bepari, Dealer in Cattle of Sholapur and 7 others. plaintiffs.

Vs.

1. The State of Bombay. defendant.

Herein the defendant submits as follows:-

1. Notice under section 80 Civil Procedure Code was given by plaintiff No.1 alone though there are 8 plaintiffs. Such a notice is invalid, insufficient and not in strict compliance with the terms of the said section. The suit, is, therefore, bad for want of proper notice.

2. The allegations in paras 1 to 6 of the plaint are all denied and the plaintiffs are put to strict proof of the same. The police came to know that the plaintiffs or their agents were unlawfully in possession of a number of animals without being able to satisfactori account for their possession. There were reasonable ground for the police to believe that the animals had been eithe stolen or fraudulently obtained. So the Police attached the animals on 1-3-1949 and duly sent up a case against the plaintiffs under section 61-E of the Bombay District Police Act. The Police have acted quite legally and in good faith.

3. The plaintiffs failed to take back the animals though it was open to them to do so furnishing the necessary security. The animals were entrusted to the Goshala at Bijapur. The plaintiffs dragged on the cases under section 61-E of the District Police Act over a lon period by taking a number of adjournments. In the mean-while 34 out of the 46 animals attached died in the.

ordinary course of nature. This defendant is and has always been ready to restore the remaining animals to the plaintiffs' possession if sufficient security were to be furnished. This defendant is in no way responsible for the lass occasioned by a natural cause. So this suit for restoraton and damages is not tenable.

It is therefore submitted that the suit be dismissed with costs.

District Government Pleader,Bijapur.

I K.R.Rao,M.A.LL.B.,District Government Pleader, Bijapur, declare that what is stated in parapraphs 1 to 3 above is true on information received and believed to be true.

District Government Pleader,Bijapur.

Suits :

Bijapur.

For restoration of cattle which were attached by the Police and members of the Home Guard.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 6109.

Bombay Castle, 4th May 1950.

Letter from the Collector of Bijapur, No. L. A. W.-196, dated 27th October 1949—

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BIJAPUR.

Civil Suit No. 204 of 1949.

M. H. Bepari and 7 others ... ... Plaintiffs;

versus

The State of Bombay ... ... Defendant.

Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

Memorandum to the District Government Pleader, Bijapur, No. 5552, dated2 4th April 1950—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

R. T. Kutadlad

Original for

P. M. LAD,
Secretary to Government.

G. R., L. D., No. 6109, dated the 4th May 1950.

To

*The Home Department,
*The Collector of Bijapur,
The District Government Pleader, Bijapur (with two copies of the brief).

*With a copy of the brief.

No. of 1950.

Copy forwarded for information and guidance to

Issued 20/9/50

Submitted after issue
File in S. Bijapur/50 (new)
21-9
9.3 21/9

S Bijapur

BIJAPUR CIVIL SUIT No. 204 OF 1949.

Chronological Statement of Facts.

The suit is filed by the plaintiffs for restoration of their cattle which were attached by the Police and members of the Home Guard on or about the 16th February 1949.

2. The said cattle were attached on the date in question when they were being driven from Bijapur to Sholapur. Later on the Police sent up eight cases against the plaintiffs under section 61 E of the Bombay District Police Act and the 46 animals attached from them were given in charge of an association called the Goshala of Bijapur. Thereafter the plaintiffs were asked to take back the animals on executing a security bond but they refused to do so.

3. On 2nd March 1949 the plaintiff No. 1 sent a notice under section 80 of the Civil Procedure Code and on 20th May 1949 the plaintiffs filed the suit in the Court of the Civil Judge (Senior Division), Bijapur.

Grounds of Defence.

1. *Notice.*—The notice of the suit has been given by only one out of the eight plaintiffs. The notice is, therefore, invalid and insufficient. Since the Privy Council's judgment in *Bhagchand* v. *Secretary of State* (I. L. R. 51 Bom. 725), strict compliance with the terms of section 80 has been enforced and a notice given by one of these plaintiffs has been held to be insufficient. (*Appa Rao* v. *Secretary of State*, I. L. R. 54 Mad. 416). The District Government Pleader is therefore requested to take a preliminary objection of absence of sufficient notice.

2. The plaintiffs contend that they are *bona fide* dealers in cattle and that on the date in question the plaintiff No. 1 was taking 71 cattle which he had purchased on 14th February 1949 to Sholapur for the purpose of trade and that the Police wrongfully attached them and refused to restore the cattle in spite of the plaintiff's protest. This does not appear to be correct. It is not disputed that the plaintiffs' animals were attached by the Police but thereafter it seems that the plaintiffs are being prosecuted for an offence under section 61 E of the Bombay District Police Act, 1890. There was therefore reason to believe that the animals were stolen property or fraudulently obtained and they could not be returned to the plaintiffs in view of the prosecution. Further detailed instructions on this point should be taken by the District Government Pleader from the Additional District Magistrate, Bijapur. The plaintiffs were subsequently asked to take back the animals on executing a security bond but they failed to do so. In the meantime there were casualties amongst the animals and only 12 out of the 46 animals attached are now alive. It is therefore not possible to return all the animals to the plaintiffs and their claim for restoration against Government is untenable. The plaintiffs must blame themselves for whatever loss incurred by them. It was open to them to take possession of their cattle on executing the required bond.

In theCourt of the Civil Judge, Senior Division. Bijapur.

At Bijapur.
Civil Suit No. 204 of 1949.
1. Mahamadsaheb Husensaheb
Ansarsaheb Bepari and
7 others. .. plffs.

Vs,

1. The Province of Bombay.

JUDGMENT.

Suit for a deirection to the defendants to restore the plaint cattle unlawfully attached by the Police and for incidental reliefs.

2. The plaint is based on the allegations that the plaintiffs are the owners of the suit cattle, that the animals were being conveyed to Sholapur, that the Police attached them on 16-2-1949, that the plaintiffs' man told the Police that the cattle really belonged to the plaintiffs that plaintiffs made an appliction to the District Magistrae, Bijapur, that they also approached the District Superintendent of Police, and that they were threatened with a prosecution

3. The defendants in their written statement contend that notice was served on the defendants by plaintiff No.1 alone, that the suit is not tenable under section 80C.P.C that the cattle was attached because the Police had grounds to believe that the animals were either stolen or dishonestly possessed, that the plaintiffs could have taken back the animals on furnishing security, that 36 animals died, that defendants are not responsible for their deaths and that the suit should be dismissed with costs.

4. The following issues were framed as preliminary issues.

1. Whether notice was given about the suit claim by plaintiff 1 alone ?
2. If so, whether such a notice is a compliance with the provisions of section 80 C.P.C.

3. If issue Nos 1 and 2 are answered against plaintiffs whether the suit is tenable ?

5. My findings are:-

1. Yes. 2. No. 3. No.

Reasons.

6. This suit is instituted by eight plaintiffs to establish their title to the plaint catttle and that the cattle was unlawfully attached by the Police on 16-2-1949. Ex.22A which is dated the 2nd of February 1949, is the notice sent by the first plaintiff alone to " The Collecbor of Bijapur" and the " Secretary to the Provincial Government of Bombay" under section 80 of C.P.Code. The question is, whether the present suit brought by the eight plaintiffs, is maintainable when the notice required by section 80 of the Civil Procedure Code, was given by the first plaintiff alone. In other words, whether such a notice can be deemed to be a sufficient compliance with the requisites of section 80 of C.P.Code. That section lays down that no suit shall be instituted against the Provincial Government or the Collector of the District unless two months before the institution of that suit a notice in writing is given stating the cause of action, the name, description and place of residenee of the plaintiff and the relief which he claimed. There should also be an averment in the plaint that such a notice was delivered or left as stated in the aforesaid section.

7. It is argued by Mr.V.G.Muddebihalkar for plaintiffs that, if a strict interpretation of section 80 is made, the plaint, as a whole, should not be rejected, but only so far as plaintiffs 2-8 are concerned.

8. I cannot accept his contention because the plain meaning of the section seems to be that, if any of the defects mentioned therein is found to exist in any case, the plaint shall be rejected as a whole. It does not imply any reservation in the matter of the rejection of the plaint. The suit is, therefore, liable to dismissal on account of non-compliance with section 80 of C.P.Code(54Mad.416).

9. In the result the plaint is rejected under O.7, rule 11 C.P.Code. The plaintiff to pay the defendant's costs.

Sd. A.C.Sequeira.
28-9-1950. Civil Judge, Senior Division, Bijapur.

"True Copy"
Dist.Govt Pleader, Bijapur.

Suits:
Bijapur.
For restroration of cattle which wer
attached by the Police and membxers
of the Home Guard.

GOVERNMENT OF BOMABY,
Legal Department,
Resolution No. 14345
Bombay Castle, 12th Oct 1950.

Read Government Resolution, Legal Department, No.6109, dated the 4th May 1950.

Letter from the District Government Pleader, Bijapur,

In the Court of the Civil Judge (Senior Division) Bijapur.		No. 662, dated the
Civil Suit No. 204 of 1949		29th
M.H. Bepari and 7 others.	Plaintiffs;	September
Versus		1950, -
The State of Bombay. .	Defendant.	

Forwarding the uncertified copy of judgment and stating that the suit noted in the margin was decided by the Civil Judge, Senior Division, Bijapur, on 28th September, 1950, when the following order was passed :-

The plaint is jegected under O. 7 Rule 11 C.P. Code. The plaintiff to pay the defendant's costs."

RESOLUTION :- The result of the suit is recorded.

By order of the Governor of Bombay,

original E.P. Bhamgara

(E.P. Bhamgara)
Additional ~~Ex~~ Assistant Secretary to Government.

Issued on 12/11

To
The Home Department,
The Collector of Bijapur,
The District Government Pleader. Bijapur.

HSP
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Forwarded for regn
AE 11/10 AAF

Form.

In the court of [illegible]

Sitapur.

Civil suit no. 204 of 1949.

1. [illegible] Ismail [illegible], 45, pc cannt dealer in cattle of Sholapur.
2. Alli [illegible] Ismail, 30,
3. Mohamadbhoy Hussenbhoy Alli, 35.
4. Hasanali Ismailbhoy Ismail, 30.
5. Ismailbhoy Allibhoy Muslim, 40,
6. Moulabhoy Moradalibhoy Muslim, 30.
7. Moradbhoy Valibhoy Muslim, 25.
8. Mohamedbhoy Allabhoy, Muslims,

All dealers in cattle at Sholapur ... Plaintiffs

Vs.

1. The Collector of Sitapur.
2. The Secretary, to the Provincial Govt. Bombay. ... Defendants.

Claim Rs. 205/-.

In this case plaintiffs pray as follows:- that the plaintiffs are the [illegible] residents of Sholapur city have been dealing in cattle for last 30 years and as such have been [illegible] and various places in Sitapur and Sholapur districts. As much as [illegible] cattle including [illegible] buffaloes, bullocks, and cows, on 14-8-1949 [illegible] Rs. 9000/-

375 19

ordering them and their servants to restore the cattle to plaintiff and hereafter not to attach the cattle in any way.

The cause of action arose on 14-2-1949 and 1-3-1949 in Miajar and hence this suit is properly here.

The valuation of the suit is Rs. and for injunction Rs. 5/- and the purpose of Court's jurisdiction and pleader's fee Rs. 205/-.

It is now prayed :-

(a). that the plaintiffs are dealers in cattle for the last 30 years and have purchased these cattle in open market for valuable consideration on 14-2-1949 or thereabouts.

(b). the defendants' servants have illegally and wrongfully attached the cattle from the plaintiffs and refused to restore them on 1-3-1949 [illegible] 1949 etc.

(c). that the defendants be ordered forthwith to restore the cattle attached to the plaintiffs immediately and they may be enjoined not to interfere with the legal rights of purchasing and selling the cattle from place to place [illegible]

(d). in case of necessity and if the circumstances so required the plaintiffs may have the opportunity and permission to amend the plaint.

This suit coming before Shri. A.V. Deshpande, Civil Judge, Sr.Dn., this day the 27th of September 1950, in the presence of Shri. V.G. Mudbidrikar pleader for the plaintiffs and Shri. K.H. [illegible] pleader for the defendant, it is hereby ordered and decreed that :

For these reasons by finding is there is no

S.C. 20

In the result the plaint is rejected under O.7 Rule 11 C.P.Code. The plaintiff to pay the defendant's costs.

Bill of Costs.

For plaintiff.		For Defendant.	
1. For Court Fees Stamps.	Rs. 20- 8-0	1. Pleader's Fee.	40- 0-0
2. Vakalat.	0-10-0	2. Application Exhs. 9 to 14.	3-12-0
3. Application Exhs. 3, 6,8.,19,20 and 24.	2- 3-0	Total :	43-12-0
4. Pleader's Fees.	60- 0-0	Deduct Disallowed for Exhs. 9 to 14.	3-12-0
5. Process	4- 0-0	Total :	40- 0-0
Total:	87- 5-0		
Deduct disallowed, costs.			
For Exhs. 3 to 6 8, 19,20 and 24.	2- 5-0 85- 0-0		

Given under my hand and seal of the Court this day the 27th September 1950.

Sd/- A.C. Sequeira
Civil Judge, Jr.Dn.,
Bijapur.

Sd/- M.R. Patil
Clerk.

"True Copy"

Dictated Judgment
27-11-50

While he was taking them with his servants from Bijapur to Sholapur the police of City of Bijapur attacked them on 16-2-1949 or thereabout. The plaintiffs told them that is the servants of the defendant that he is a bona fide dealers in cattle and have purchased them for valuable consideration and so the cattle should be restored to them. The police refused to restore the cattle, the plaintiffs put in their application to the District Magistrate, Bijapur for their restoration as the cattle belong to them and they are entitled to them, and that the cattle are without water and food and fodder, so they will be an imminent chance of suffering heavy damage.

Again the plaintiff gave similar application to the District Magistrate Bijapur on 22-2-1949 with the same request. The District Magistrate Transferred it to the D.S.P. Bijapur for prompt action, as it is said :-

On 22-2-1949 and 1-3-1949 the plaintiffs again went to the D.S.P. and the D.M. and put reminder application to restore the cattle to him, on his undertaking to produce them whenever wanted. But the D.S.P. refused to restore them and the applicants will be prosecuted on legal grounds. Then the cause of action arose in Bijapur as the defendant's agent i.e. the Police of City Bijapur have wrongfully detained them illegally and do not return the cattle to them hence they are required to file this suit.

This suit is for declaration and an injunction restraining the defendant from depriving the plaintiffs of their cattle and ordering them to restore the cattle to them.

The business of the plaintiffs is an honest and open one and they have honestly purchased them in the open market and have documents to prove their ownership. The defendant and his servants have no business to stop and attach the cattle illegally and wrongfully and hence this suit is for the purpose of granting the permanent injunction